No. 11,197

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

J. A. HAGEN, individually, and doing business as El Rey Cheese Co., JACK AROS and EVERETT HAGEN,

Appellants,

vs.

PAUL A. PORTER, Administrator, Office of Price Administration,

Appellee.

BRIEF FOR APPELLEE.

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FILED
MAY 6 - 1948

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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BRIEF FOR APPELLEE.

COUNTERSTATEMENT.

The respondents (appellants herein) J. A. Hagen, individually and doing business as El Rey Cheese Co., Jack Aros and Everett Hagen are engaged in the wholesale cheese business. As dealers in this commodity respondents were subject to Maximum Price Regulation (MPR) 280 as amended (7 F.R. 10144); Revised Maximum Price Regulation (RMPR) 289, as amended (9 F.R. 5140), and Temporary Maximum Price Regulation (TMPR) 22 (7 F.R. 7914). These

regulations, in harmony with Section 202(b)[1] of the Act, require the seller to keep such records and reports as the Administrator may direct and to permit the Administrator upon request to inspect them. (Section 1351.812 of MPR 280; Section 5 of RMPR 289, and Section 1351.807 of TMPR 22; see Appendix, pp. i-iv.) A violation of any regulation is a violation of the Act. (Sec. 4(a) of the Act.)[2]

On May 24, 1945, the Administrator attempted to examine the records of the respondents pursuant to Section 202(a) of the Act[3] for the purpose of deter-

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[1]Section 202 (b) provides:

"(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place."

[2]Section 4. (a) It shall be unlawful, regardless of any contract agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, * * * or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

[3]Section 202. (a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

mining from their books and records whether or not they had complied with the provisions of the Act and regulations. (R. 4.) On several occasions after that date respondents refused to permit the investigators to make such investigation and inspection. (R. 5.) In order to continue the investigation, the Administrator on June 9, 1945, acting pursuant to the authority conferred upon him by Section 202(c) of the Act,[4] issue a subpoena directing each respondent to appear and produce before an enforcement attorney of the Office of Price Administration the books and records of the El Rey Cheese Co. for the period from September 28 to October 2, 1942 and from June 15, 1944 to June 8, 1945, covering purchases, sales, and deliveries made by the company of Swiss Gruyere Type cheese and Taylor-Maid Gruyere Type Swiss cheese. (R. 10-11.) The subpoena was properly served on respondents Jack Aros and Everett Hagen (R. 6), and made returnable June 11, 1945. Respondents by their attorney first refused to obey the subpoenas on the ground that the time allowed within which to comply with it was too short. On the return date, respondents' attorney claimed he would not permit his clients to answer it because it was not signed personally by Chester Bowles but by the Acting District Director. (R. 17.) Thereupon, on August 13, 1945, subpoenas similar in content to the previous ones, but signed personally by Chester Bowles were served upon respondents Jack Aros, bookkeeper, agent and attorney-in-fact of respondent com-

[4]Section 202. (c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpoena require any other person to appear and testify, or to appear and produce documents, or both, at any designated place.

pany, and Everett Hagen, manager, returnable on August 16. (R. 18, 11-14.) On the latter day an attorney for the respondents appeared specifically for the purpose of quashing the issuance and service of the subpoena upon various grounds.[5] (R. 20-22.) Because of this refusal, the Administrator, in accordance with the provisions of Section 202(e)[6] of the Act applied to the Court below for an order compelling obedience with the subpoena. (R. 2-9.) Respondents moved to dismiss these proceedings and filed affidavits in support of their motion. (R. 24-34.) After a hearing, the Court on October 29, 1945, entered orders directing respondents to comply. (R. 35-37.) From these orders, the present appeals are taken. (R. 37.)

Respondents have assigned eight different specifications of error on this appeal. Substantially each of

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[5]In brief, these were (R. 21-22):

(1) That the President of the United States had proclaimed August 16 a legal holiday for all Federal Offices;

(2) That he questioned the authenticity of Chester Bowles' signature;

(3) That insufficient notice was given;

(4) That the Fourth Amendment of the Constitution was violated; and

(5) That the information requested was not material to any investigation authorized by the Price Administrator nor within his authority to demand.

[6]Section 202 (e):

"(e) In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a)."

these objections have already been found to be wholly wanting in merit in the recent decision of the Supreme Court in *Oklahoma Press Publishing Co. v. Walling,* 66 S.Ct. 494, and three previous decisions of this Court (*Bowles v. Glick Brothers Lumber Co.,* 146 F. (2d) 566 (C.C.A. 9th), cert. denied 65 S.Ct. 1554; *Bowles v. Abendroth,* 151 F. (2d) 407 (C.C.A. 9th); *Bowles v. Northwest Poultry & Dairy Co.,* 153 F. (2d) 32 (C.C. A. 9th)). We will discuss these specifications of error in order.

ARGUMENT.

POINT I.

THERE IS NO MERIT EITHER TO THE FIRST SPECIFICATION OF ERROR THAT THE COURT BELOW ERRED IN ISSUING ITS ORDER WHERE THERE WAS NO SHOWING OF RELEVANCY OR MATERIALITY OF THE DOCUMENTS SOUGHT TO BE PRODUCED, OR TO THE SECOND SPECIFICATION OF ERROR THAT THE ADMINISTRATOR MUST PRODUCE SUCH EVIDENCE BEFORE THE SUBPOENA WILL BE ENFORCED.

In respondents' first contention it is urged that the Court erred in issuing its order where there was no showing of relevancy or materiality of the documents sought to be produced. In their second specification of error respondents argue that the Administrator must produce such evidence before the subpoena will be enforced. These two contentions will be treated together.

The petition and affidavits in support of the order enforcing the subpoena recite that the respondents are engaged in the business of selling at wholesale various types of cheese and as such are subject to the provisions of MPR 280, 289 and GMPR (R. 3); that petitioner

deemed an investigation necessary to determine if respondents have complied with the Act and to assist in the administration and enforcement of the Act (R. 4); that in conducting said investigation it was necessary to obtain information from the records kept by El Rey Cheese Co. in the regular course of business; that this information could most efficiently be obtained by an inspection of respondents' records which it was required to keep by the above regulations; that investigators on several occasions requested inspection of certain records pertaining to the sale of certain cheeses subject to these regulations; that these were the records which were requested in the subpoena (R. 5); and that the records required to be produced are "relevant and material to said investigation". (R. 7-8.)

Respondents' principal complaint is that the Administrator has failed to allege that any violation has been committed. (Respondents' Brief, p. 8.) A showing of "probable cause" however is not a prerequisite for enforcement of an administrative subpoena. (*Walling v. Oklahoma Press Publishing Co.,* 66 S.Ct. 494; *Bowles v. Glick Lumber Brothers Co.,* supra; *Bowles v. Insel,* 148 F. (2d) 91 (C.C.A. 3rd).) "It is not necessary, as in the case of a warrant, that a specific charge or complaint of violation of law be pending or that the order be made pursuant to one. It is enough that the investigation be for a lawfully authorized purpose, within the power of Congress to command." (*Walling v. Oklahoma Press Publishing Co.,* supra.)

Next, it is to be noted that respondents do not claim that the specific cheeses, records of which inspection is

sought here, are not covered by the regulations, or that their transactions respecting them are exempt from regulation. Respondents merely claim a failure to charge such coverage in the petition in support of enforcement of the subpoena. But this is not enough to overcome the presumption of regularity which normally attends the acts of administrative officers. (See *Bowles v. Northwest Poultry & Dairy Products,* supra.) Apart from that, this omission in the petition was not fatal, since the Court is required to take judicial notice of the provisions of the regulations. (Federal Register Act, 44 U.S.C. #307; *United States ex rel. Brown v. Lederer,* 140 F. (2d) 136 (C.C.A. 7th), cert. denied 322 U.S. 734.)

Moreover, in an ex parte inquiry to determine the existence of violations of a statute, standards of materiality or relevance are far less rigid than those applied in a trial or adversary proceeding. Judge Cardozo (later Mr. Justice) stated the reason for the rule in *Matter of Edge Ho Holding Corp.,* 256 N.Y. 374, 176 N.E. 537 (256 N.Y. at 382):

> "Very often the bearing of information is not susceptible of intelligent estimate until it is placed in its setting, a tile in the mosaic. Investigation will be paralyzed if arguments as to materiality or relevance, however appropriate at the hearing, are to be transferred upon a doubtful showing to the stage of a preliminary contest as to the obligation of the writ."

And as said in *Walling v. American Rolbal Corporation,* 135 F. (2d) 1003 (C.C.A. 2nd) (at p. 1005):

> "It may be that the refused records will not bear directly upon that subject but we cannot say they won't or that they won't supply needed information for use in checking other facts and records. As the administrator has not been shown to have abused its discretion in the selection of the records to be inspected we agree that the order below was without error."

The reasoning applied in those cases is particularly applicable here. Section 202 of the Act grants extremely broad investigative power and authorized the Administrator "to obtain, by subpoena or documents or otherwise, 'such information as *he deems necessary or proper*' to assist him in enforcing the act and regulations thereunder. 50 U.S.C. Appendix #922(a)". (Italics ours.) (*Bowles v. Bay of New York Coal and Supply Corporation,* 152 F. (2d) 330 (C.C.A. 2nd).) The legislative intent is equally clear to provide authority for obtaining "any information, oral or written, which may be of assistance to the Administrator in carrying out his duties". (Senate Report No. 931, 77th Cong. 2nd Sess. p. 8.)[7] "The statute granting him

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[7]In reporting on the bill (H.R. 5990) which later became the Emergency Price Control Act, the Senate Committee on Banking and Currency said concerning the investigatory powers granted to the Price Administrator: "The committee, of course, recognizes that competent administration and enforcement of the act will be impossible unless the Administrator and persons acting under his direction are given broad investigatory powers. To this end the bill, like most recent legislation, provides authority for obtaining *any information,* oral or written, *which may be of assistance to the Administrator in carrying out his duties.* Power to enforce the right of inspection and to compel oral testimony and the production of documents is given to the appropriate courts." Senate Report No. 931, 77th Cong., 2nd Sess., p. 8. (Italics ours.)

powers is inclusive and all embracive when it comes to investigation." (*Bowles v. Shawano National Bank,* 151 F. (2d) 749, 751 (C.C.A. 7th), cert. denied 66 S.Ct. 680.) The Administrator's plenary powers includes not only the right to inspect records required to be kept by the regulations, but likewise records not required to be kept by the regulations, so long as the information will be of aid in assisting him in the discharge of his duties. (*Bowles v. Shawano National Bank,* supra,[8] where examination of bank records of a cheese dealer was allowed.) The provisions of the Act relating to inspection of records apply not only to persons who are subject to the Act (Sec. 202(b)) but as well to "any other person" (Sec. 202(c)) who may provide "any" information to assist the Administrator in achieving the purposes of the Act.

It is true, as respondents say (pp. 13-14 of their brief), that the mere issuance of an administrative subpoena does not require the District Court to enforce it in every case. Some of the limits within which a Court may exercise its discretion in declining enforcement of a subpoena have already been indicated by this Court, as for example where the subpoena is vague or unreasonably burdensome or unauthorized by statute. (*Bowles v. Abendroth,* 151 F. (2d) 407 (C.C.A. 9th).)

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[8] "The Administrator, *ex necessitate*, needs investigatory powers both to promulgate rational orders and regulations, and to apprehend violations thereof. He cannot intelligently make charges without knowing facts to substantiate them. The accused would vigorously and justly protest against unfounded charges. How is the Administrator to unearth such violations or to confirm information given him by aggrieved persons or alert citizens? By investigation and checking, of course." (151 F. (2d) at p. 751.)

But it is not to be presumed that the Administrator has "acted oppressively or undertaken to pursue investigations where no need therefor is apparent". (*Bowles v. Glick Brothers Lumber Co.,* supra; *Bowles v. Northwest Poultry & Dairy Co.,* supra.) The probable materiality of the records may appear from the face of the subpoena and petition supporting it. (*Brown v. United States,* 276 U.S. 134, 143.) And there can be no doubt at all from the face of the petition and the attached subpoena in this case, that the records requested are clearly relevant to a lawful inquiry.

Neither is there any substance to respondents' claim that the Court below was oblivious of the fact that the records requested must be material to the inquiry at hand. On the contrary, the Court said: "if the questions are immaterial * * * and violate their constitutional rights * * * this court is not going to make them answer." (R. 57.) There is therefore no merit whatever to Specifications of Error 1 and 2.

POINT II.

THE COURT DID NOT ERR IN REFUSING TO HEAR EVIDENCE AS TO THE VALIDITY OF THE EXECUTION OF THE SUBPOENAS.

In the third specification of error respondents claim that the Court erred in refusing to hear evidence as to the validity of the execution of the subpoenas.

In an affidavit in support of the motion to enforce the subpoena, an attorney for the Office of Price Ad-

ministration alleged that the subpoenas "have been signed personally by the Administrator" (R. 18) but respondents persisted in questioning the authenticity of this signature, although they offered no proof casting doubt upon it on the hearing.

Since the subpoena bore an official signature of a federal officer, it must be presumed to be genuine. (7 *Wigmore on Evidence* #2167 (3rd Ed.); *Wynne v. United States,* 217 U.S. 234.) In the last cited case, it was claimed that a copy of a vessel's enrollment purporting to be signed and sealed by a deputy collector of customs was not genuine. The Court disposed of this contention as follows:

> "There was no evidence whatever casting suspicion upon the genuineness of the copy or of the seal or the signature of Farley, and none which challenged in any way the American character of the ship. Under such circumstances and for the purposes of this case it was not error to assume that the document was genuinely executed by Farley, that he was what he claimed to be, a deputy collector of customs, and that his signature had been signed by himself or one authorized to sign for him. (3 Wigmore, Ev. #2161.)"

Moreover in California, Courts take judicial notice of "* * * The official signatures * * * of the principal officers of government in the legislative, executive and judicial departments of this State and of the United States". (C.C.P. 1872, #1875.) See also, Rule 43 of the Federal Rules of Civil Procedure.[9]

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[9]Rule 43(a). Form and Admissibility. * * * All evidence shall be admitted which is admissible under the statutes of the United

There is therefore no merit to this specification of error.

POINT III.

THERE IS NO MERIT TO THE FOURTH SPECIFICATION OF ERROR THAT THE SUBPOENAS WERE UNCERTAIN, INDEFINITE, AND UNREASONABLE.

Respondents argue in their fourth specification of error that the subpoenas were uncertain, indefinite, and unreasonable. It is true that the subpoenas asked for the production of "all of the books, ledgers, day books, purchase and sales invoices, etc." in the sales of the two specified cheeses for a period of about one month in 1942 and for the period June, 1944 to June, 1945. Respondents object to the use of the word "etc." as suggesting a general and sweeping investigation.

The only requirement as to the specification of the documents sought to be examined is that the subpoena must describe them with such precision as is reasonably possible. The subpoena here challenged complies with this rule. Properly construed, the word "etc." merely means other records dealing with the same subject matter; it does not include records which have no relation to the commodity investigated. Even if the term "etc." may be said to include *all* documents relating to all the transactions in the two specific cheeses

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States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made.

investigated, it would still be enforcible. (*Consolidated Rendering Co. v. Vermont,* 207 U.S. 541, 554; *Nelson v. United States,* 201 U.S. 92.) "We see no reason why *all* such books, papers and correspondence which related to the subject of the inquiry, should not be called for and the company directed to produce them. Otherwise the state would be compelled to designate each particular paper which it desired, which presupposes an accurate knowledge of such papers, which the tribunal desiring the papers would probably rarely, if ever, have." (*Consolidated Rendering Co. v. Vermont,* supra, 207 U.S. at p. 554; see also footnotes 40 and 46 of the *Oklahoma Press Publishing Co.* case for other examples of far greater scope and time than was sought in these proceedings.)

However, whether the word "etc." was properly used in the subpoena is of no materiality here. All that is involved on this appeal is the scope of the order of the Court, and this order omits any reference to "etc." (R. 36.) The order of the Court is wholly free from uncertainty and indefiniteness. (Cf. *Cudmore v. Bowles,* 145 F. (2d) 697 (App. D.C.).) Since it is limited to records relating merely to Swiss Gruyere Type cheese and Taylor-Maid Gruyere Type Swiss cheese for the period from September 28 to October 2, 1942 and from June 15, 1944 to July 28, 1945, it was clearly reasonable in respect to the number of commodities or the period of time covered (*Oklahoma Press Publishing Co. v. Walling,* supra; *Brown v. United States,* 276 U.S. 138), and "should have ben obeyed without recourse to the Court". (*Cudmore v. Bowles,* supra.)

POINT IV.

THE COURT DID NOT ERR IN HOLDING THAT RESPONDENTS HAD FAILED TO ANSWER AND APPEAR AT THE TIME AND PLACE CALLED FOR IN SAID SUBPOENAS.

In their fifth specification of error respondents complain that the Court erred in holding (R. 35) that they failed to answer and appear at the time and place called for in said subpoenas. There is ample evidence to support this finding of the Court below.

Respondents do not claim they personally appeared in response to the subpoenas but only that their attorney appeared for the purpose of resisting the subpoena upon "legal and sufficient grounds". Clearly this was no appearance by respondents. The record shows that respondents refused to appear in answer to the subpoenas, first (R. 17) on the excuse that inadequate time was allowed by the subpoena, then (R. 17) on the pretense that the subpoena was not signed by the Administrator, and finally (R. 19, 21-22) when the subpoena was actually signed by the latter, they refused to allow inspection because of a host of other technical objections, none of which the Court found to be tenable. And even now they are still continuing to obstruct the administrative process by refusing to allow their records to be inspected. Little wonder, therefore, that the Court found that respondents had failed and refused to obey the subpoenas. There was no room for any other conclusion.

Apart from that, it is immaterial on this appeal whether or not respondents failed to answer and appear at the time and place called for in said subpoena,

since they also disobeyed the subpoena by failing and refusing to produce the records designated therein.

POINT V.

THE COURT BELOW DID NOT ERR IN REFUSING TO REQUIRE THE ADMINISTRATOR TO PROVE SERVICE OF THE SUBPOENAS AND THE ORDER TO SHOW CAUSE UPON RESPONDENT J. A. HAGEN.

In their sixth specification of error, respondents claim that the subpoenas were served only on Jack Aros, bookkeeper, and Everett Hagen, manager, but not upon the proprietor, J. H. Hagen; that no showing was made that either of these two respondents had custody or control of the records; and no showing was made that any attempt was made to serve J. A. Hagen.

The order of the Court below merely directs Aros and Everett Hagen to obey the subpoenas, not J. A. Hagen, so that this is not a case where it can be said that the order is broader than the jurisdiction which the District Court obtained under the service.

While Jack Aros and Everett Hagen both deny the records are in their control, they do not disclaim custody or possession. And J. A. Hagen, alleged proprietor, has submitted no affidavit to support the objection that control of the records is solely in him. The issue of whether Aros and E. Hagen had control of the records was a question of fact for the District Court to decide. Apparently, the Court was little impressed with respondents' excuse. So also in *Bowles v. Feld,* 148 F. (2d) 91 (C.C.A. 3rd), respondent, an

alleged partner of a firm, likewise disclaimed control on the ground that he was no longer a partner of the firm subpoenaed, but the Circuit Court of Appeals dismissed this contention as one "so lacking in merit as not to warrant discussion". (See also, *Bowles v. Bay of New York Coal & Supply Co.,* 152 F. (2d) 330 (C.C.A. 2nd), where similar disposition was made of a contention advanced by an assistant secretary of a corporation where the subpoena was directed to the corporation by its president.)

Apart from these considerations, respondents' argument is of no materiality at this stage of the proceeding. Whether respondents have the records in their control or whether they are deliberately withholding them, is a matter for the District Court to decide if and when the Court's order is disobeyed. "No more is now involved than the judgment and order of the District Court." (*Cudmore v. Bowles,* supra.)

POINT VI.

THERE WAS NO VIOLATION OF THE FOURTH AMENDMENT.

In their seventh specification of error, respondents urge that the subpoenas and order of the Court below constitute an unreasonable search and seizure under the Fourth Amendment. Once again respondents repeat their prior contentions of the absence of any showing of "probable cause"; that the Court below failed to find that the documents sought were relevant and material; and that the Administrator seeks to inspect records without service of process on the owner. These

objections have been considered at an earlier portion of this brief. In no respect have respondents shown that the present inquiry is oppressive or that the Administrator has abused its discretion in any way in seeking to proceed with this investigation. Both the subpoenas and the order of the Court below enforcing them plainly meet the standards of relevancy, specificity and reasonableness. Respondents' plea that their rights secured by the Fourth Amendment have been violated "only raises the ghost of controversy long since settled adversely to their claim". (*Oklahoma Press Publishing Co. v. Walling,* supra; see also, *Bowles v. Glick Lumber Products Co.,* supra; *Bowles v. Northwest Poultry & Dairy Products Co.,* supra; *Bowles v. Feld,* supra.)

POINT VII.

THERE WAS NO VIOLATION OF THE FIFTH AMENDMENT.

Neither is there any merit to respondents' last specification of error that the subpoenas and order of the Court below violated their rights against self-incrimination contrary to the Fifth Amendment.

Records, of which examination is requested, are those that respondents were required to keep by law. They were therefore quasi-public papers which respondents may be compelled to produce even though the contents of these records may tend to incriminate them. The constitutional privilege against self-incrimination does not extend to such records. (*Bowles v. Glick Bros. Lumber Co.,* supra, 146 F. (2d) at p.

571; *Coleman v. United States,* 153 F. (2d) 400 (C.C.A. 6th); *Wilson v. United States,* 221 U.S. 361, 380; *Bowles v. Rothman,* 145 F. (2d) 831 (C.C.A. 2nd); *Rodgers v. United States,* 138 F. (2d) 992, 996 (C.C.A. 6th); *Bowles v. Beatrice Creamery Co.,* 146 F. (2d) 774 (C.C.A. 10th); *Cudmore v. Bowles,* supra.)

Even if the records of which inspection was sought were not quasi-public records, the privilege against self-incrimination would still be unavailable because of Section 202(g) of the Act. This section provides:

> "No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U.S.C. 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege."

The Act thus requires the respondents to appear and specifically claim their privilege, at which time the Administrator or his representative may nevertheless require the testimony in question, but respondents, by operation of law, will receive immunity granted by the terms of the Act. Thus the Act clearly states that a person may not rely on the claim of privilege as a defense in these proceedings.

It is apparent also that questions of constitutional privilege against self-incrimination are not pertinent to the issues in this proceeding to enforce an administrative subpoena. Rather this is a question to be determined in any criminal prosecution or penal action

which may subsequently be instituted. As was said in *Cudmore v. Bowles,* supra:

> "On this appeal, it is contended that the order of the Administrator violated appellant's constitutional rights, because of penalties which might have been imposed upon him or upon the corporation, of which he is secretary and owner of one-half its capital stock, as a result of disclosures which might have been made in these invoices, of possible innocent and unintentional violations of price ceilings. It must be noted in the first place that this contention is beside the point, as no more is now involved than the judgment and order of the District Court. * * *"

CONCLUSION.

The inspection sought by the subpoena was not "plainly incompetent or irrelevant to any lawful purpose" of the Administrator in the discharge of his duties under the Act, and it was therefore "the duty of the District Court to order its production". (*Endicott-Johnson Corporation v. Perkins,* 317 U.S. 501, 509.) It is evident that respondents' embrace of constitutional guaranties merely masks a well designed interference with the orderly, usual and well established procedure of administrative agencies.

The order of the Court below is proper in all respects and should be affirmed.

Dated, May 6, 1946.

Respectfully submitted,

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(Appendix Follows.)

Appendix.

Appendix

REGULATIONS.

1. Maximum Price Regulation 280. (8 F.R. 5165.)

§ 1351.812. *Records and reports.* (a) As to all sales not specifically exempted by other sections of this Maximum Price Regulation No. 280 every person selling a listed food product shall preserve for examination by the Office of Price Administration all his existing records relating to prices which he charged for such listed food product delivered or supplied during the period from September 28, 1942, to October 2, 1942, inclusive, and his offering prices for delivery or supply of a listed food product during such period; and shall also preserve all information and records required by § 1351.807 of Temporary Maximum Price Regulation No. 22, and shall keep for examination by any person during ordinary business hours a statement showing (1) the highest prices charged for such listed food product delivered or supplied during such period and his offering prices for delivery or supply of a listed food product during such period, together with an appropriate identification of such product and (2) all his customary allowances, discounts, and other price differentials.

(b) As to all sales not specifically exempted by other sections of this Maximum Price Regulation No. 280, every person selling a listed food product shall keep and make available for examination by the Office of Price Administration records of the same kind as he has customarily kept relating to the prices which

he charged for such food product during the period from September 28, 1942, to October 2, 1942, inclusive, and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices.

(c) Such persons shall submit such reports to the Office of Price Administration and keep such other records in addition to or in place of the records required in paragraphs (a) and (b) of this section as the Office of Price Administration may from time to time require.

2. Revised Maximum Price Regulation 289. (9 F.R. 5140.)

SEC. 5. *Records and reports.* (a) Every sale of a listed dairy product covered by this Revised Maximum Price Regulation 289, except as hereafter provided in this regulation, shall be invoiced by the seller. The original invoice shall be delivered to the buyer and shall state (1) the date of purchase, (2) the names and addresses of the buyers and sellers, (3) the quantity, grade, and type of package of each listed dairy product sold, (4) the price, per unit of sale and in total, and (5) the geographical place for which the price is calculated.

(b) Every buyer of any listed dairy product shall preserve for inspection by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, the original, and every seller of any listed dairy product shall similarly preserve a copy, of each invoice required to be furnished by paragraph (a) of this section.

(c) Every person subject to this regulation shall keep such other records and shall submit such reports as the Office of Price Administration may from time to time request in writing, either in addition to or in substitution for records and reports therein required.

3. Temporary Maximum Price Regulation No. 22. (7 F.R. 7914.) This regulation, issued October 3, 1942, was superceded by Maximum Price Regulation No. 280 on December 3, 1942.

§ 1351.807. *Records and reports.* (a) As to all sales not specifically exempted by other sections of this Temporary Maximum Price Regulation No. 22 every person selling a listed food product shall preserve for examination by the Office of Price Administration all his existing records relating to prices which he charged for such listed food product delivered or supplied during the period from September 28, 1942, to October 2, 1942, inclusive, and his offering prices for delivery or supply of a listed food product during such period; and shall prepare, on or before October 24, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing (1) the highest prices charged for such listed food product delivered or supplied during such period and his offering prices for delivery or supply of a listed food product during such period together with an appropriate identification of such product, and (2) all his customary allowances, discounts, and other price differentials.

(b) As to all sales not specifically exempted by other sections of this Temporary Maximum Price

Regulation No. 22, every person selling a listed food product shall keep and make available for examination by the Office of Price Administration records of the same kind as he has customarily kept relating to the prices which he charged for such food product during the period from September 28, 1942, to October 2, 1942, inclusive, and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices.

(c) Such persons shall submit such reports to the Office of Price Administration and keep such other records in addition to or in place of the records required in paragraphs (a) and (b) of this section as the Office of Price Administration may from time to time require.